IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 1ST NOVEMBER 2006 / 10TH KARTHIKA 1928

OP.No. 10549 of 2003(E)

PETITIONER:

P.P.JOY, AGED 32 YEARS, S/O. PAPPACHAN,
POONOLY HOUSE, OKKAL KARA, CHELAMATTOM VILLAGE,
KUNNATHUNADU TALUK

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS:
---

1. STATE OF KERALA, REPRESENTED BY
SECRETARY, ANIMAL HUSBANDARY DEPARTMENT,
SECRETARIATE, THIRUVANANTHAPURAM

2. DIRECTOR OF ANIMAL HUSBANDARY ,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

3. DEPUTY TAHSILDAR (RR) TALUK OFFICE,
KUNNATHUNADU TALUK, PERUMBAVOOR.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/11/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 18249 OF2003 IN OP 10549 OF 2003

DISMISSED

1.11.2006 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE NO. 3689/B2/01/SPD DATED 29.10.2001

EXT.P2 TRUE COPY OF THE REPLY DATED 15.11.2001 SUBMITTED BY THE PETITIONER.

EXT.P3 TRUE COPY OF THE DEMAND NOTICE BO.D3-1362/03 DATED 21.2.2003 ISSUED BY THE THIRD RESPONDENT.

FIRST RESPONDENT'S EXHIBITS:

EXT.R1(a) COPY OF ORDER NO. G.O. (MS) 3/2002/SPD DATED 7.5.2002

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 10549 OF 2003

Dated this the 1st day of November, 2006

JUDGMENT

O.P. was filed challenging the proceedings to blacklist the petitioner for breach of contract with the Government and against recovery proceedings for recovery of loss sustained by the Government on account of breach committed by the petitioner. However, the proposal for penalty initiated under Ext.P1 was confirmed by the Government vide order G.O.Ms. 3/2002/SPD dated 7.5.2002 which is produced as Ext.R1(a) along with the counter affidavit. Since the proposal was confirmed in final proceedings petitioner was allowed to challenge Ext.R1(a) proceedings. I have heard counsel appearing for the petitioner and the Government Pleader.

2. Petitioner admittedly submitted tender for supply of De-oiled rice bran to feed mixing units of the Government at various centres. Supply was agreed for a period between 1.6.1999 to 31.5.2000. Even though petitioner's tender was accepted and communication was issued to him, he declined to enter into agreement for supply of materials. In

other words, petitioner backed out of the contract with the Government. Petitioner's case that contract is not entered into cannot be accepted because petitioner's offer in the form of tender is accepted by the Government and result communicated to him, which means contract came into force, no matter no formal agreement is entered into. Petitioner has also communicated to the department that he could not honour the commitment because of increase in market price of the product. Therefore breach of contract is admitted and therefore petitioner was rightly blacklisted by the respondents. I therefore decline to interfere with Ext.R1(a) proceedings of the Govt.

3. The next challenge is against recovery proceedings for recovery of compensation for the loss sustained by the Government by arranging purchase from another source after petitioner failed to supply goods in terms of tender submitted by him. It is seen that differential cost is Rs. 40003/-, details of which are not furnished to this Court. Petitioner himself has admitted that the market price has gone up, and Government obviously suffered loss. Government Pleader submitted that the loss suffered is the actual difference in price paid by the

Government for the said period. Having regard to the fact that petitioner has also not gained anything, I feel some reduction can be given to the petitioner. In the circumstances, penalty is reduced to Rs. 10000/- if the amount is paid within three weeks from the date of receipt of a copy of this judgment, if not already paid. If payment is not made as above, then reduction granted by this Court will stand automatically cancelled and respondents will proceed for recovery of the entire amount.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge